

BPB Appeal No. A1159

IN THE MATTER OF

the Building Act 2004 (the Act)

AND

IN THE MATTER OF

an Appeal to the Building Practitioners Board under Section 330(1)(a) by **[the Appellant]** against a decision of the Registrar

DECISION OF THE BUILDING PRACTITIONERS BOARD

Date and location of hearing:	26 November 2013 at [omitted]
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Appeal heard by:	Brian Nightingale, Presiding Member Colin Orchiston, Board Member Richard Merrifield, Board Member

Appearances by:	No appearances advised
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1.0 Introduction

- 1.1 [The Appellant] of [omitted] applied for a Carpentry Licence under s287 of the Act and the Licensed Building Practitioners Rules 2007¹ ("the Rules").
- 1.2 The Registrar of Licensed Building Practitioners ("the Registrar") declined the Appellant's application and notified his decision by letter dated 18 January 2013. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board ("the Board").
- 1.3 On 14 February 2013 the [Appellant lodged] an appeal to the Board against the Registrar's decision.

2.0 Licensing scheme

- 2.1 To become licensed, a person must satisfy the Registrar that they can meet all the applicable minimum standards for licensing.² The minimum standards are set out as "competencies" in Schedule 1 to the Rules. In determining whether a person meets a competency, regard must be had to the extent to which the person meets the performance indicators set out for that competency in Schedule 1³.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.⁴

3.0 Scope of the appeal

- 3.1 An appeal proceeds by way of rehearing⁵. However, the Board will not review matters outside the scope of the appeal⁶.
- 3.2 The appeal seeks the following relief:

The grant of a Carpentry Licence.

- 3.3 In light of s335(4) and the Registrar's decision letter, the Board interprets its inquiry as being restricted to consideration of Competencies 2, 3 and 4 for a Carpentry Licence.

Carpentry Licence Competencies:

Competency 2: Demonstrate knowledge of current building and trade practice.

Competency 3: Carry out planning and scheduling for carpentry work.

Competency 4: Carry out carpentry work.

¹Incorporating amendments for 2008, 2009 and 2010.

²S286 of the Act and rule 4 of the Rules.

³Clause 4(2) of the Rules

⁴S330(1)(a) of the Act.

⁵S335(2) of the Act

⁶S335(4) of the Act

4.0 Registrar's report

- 4.1 The Registrar's decision to grant or decline a licence is informed by an assessor's recommendation⁷. The Board's Appeals Procedures require the Registrar to provide a report which includes all evidence used to reach the decision, including the assessors' recommendation.
- 4.2 The Registrar's report notes, at paragraph 20, the following from the Assessor's recommendations:

"Summary of the assessor's recommendation

- Up to 1987 [the Appellant] worked in various areas such as carrying out hammer hand work, sawmilling and truck driving. [The Appellant] initially entered the workforce in the plumbing trade working on commercial and pensioner housing projects.
- Up to 1993 [the Appellant] worked for the [omitted] as a conservation worker maintaining back country huts and building some new huts.
- From 1993 to 2009 [the Appellant] began working as an equipment and machinery operator in the land transport infrastructure sector carrying out associated road infrastructure work. [The Appellant] assembled a kit set house and renovated two dwellings during this time.
- From 2009 to present [the Appellant] has changed employers in the land transport infrastructure sector working as a machine operator along with altering, extending and carrying out building work on his own private projects.
- [The Appellant] confirmed that he only carries out carpentry work on his own private projects.
- Both projects provided were extensions of [the Appellant's] own home.
- [The Appellant] confirmed he does not carry out any other building work for clients as he has been working in a different industry since 1993.
- Both of [the Appellant's] referees provided supportive comments on his ability to carry out his own residential additions and alterations; however they have not had any experience working with [the Appellant] on other building projects outside of his own private projects.
- [The Appellant] appears to be capable in carrying out his own personal building work but there is insufficient information, work history and continuity of building work within the building industry to meet Carpentry Competencies 2, 3 and 4."

⁷ clause 10 and 11 of the Rules

4.3 The Registrar concluded:

"The basis for the Registrar's decision to decline the application.

- I have been delegated under S312 (1) to review the assessment report and make a decision about [the Appellant's] application.
- I reviewed the assessors report and [the Appellant's] application.
- I based my decision on the assessor's recommendation, for the reasons set out above. I did not consider that there was sufficient reason or concern to overrule the assessor's recommendation."

5.0 Appellant's Submissions

5.1 On Thursday 21 November 2013 the Appellant requested an adjournment to the hearing for the following reasons:

5.1.1 Cost of travel from [omitted] to Queenstown.

5.1.2 Cost of Counsel's travel from [omitted] to Queenstown.

5.2 The Board met by teleconference and considered the circumstances on which the adjournment was sought and its previous directions as follows:

5.2.1 The Board's letter of 15 February 2013 outlines for the Appellant the appeal process, Board's directions and next steps with regards to the appeal. The Appellant was to provide submissions by Monday 8 April 2013.

5.2.2 On 1 March 2013 the Board responded to a query from the Appellant and offered the opportunity for further time for the submissions to be provided.

5.2.3 On 23 September 2013 the Board responded to further queries from the Appellant and confirmed that the hearing date was set down for Tuesday 26 November 2013 in [omitted] and directed the Appellant to provide submissions, names of legal counsel, other representatives, witnesses and support persons by 5 November 2013.

5.2.4 In a second letter of 23 September 2013 the Board reconfirmed the hearing date, location, procedures and directions.

5.2.5 The Board letter of 7 November 2013 in response to further queries by the Appellant reconfirmed previous directions.

5.2.6 The hearing papers were couriered to the Appellant on 19 November 2013.

5.3 The Board notified the Appellant by letter of 22 November 2013 that it declined the request for an adjournment and requested that the Appellant confirm, by 10am Monday 25 November 2013, of his intentions to either attend the hearing or withdraw. The letter also advised the Appellant that if the Board did

not receive a response to this request it would proceed with the appeal based on the information in front of it.

5.4 No response was received by the Board ahead of it convening in [omitted] on Tuesday 26 November.

5.5 The Appellant did not appear at the hearing. Notwithstanding that no response had been received from the Appellant, the Board adjourned the hearing and made four phone calls and left two messages for the Appellant to contact the Board and confirm his intentions.

5.6 In the absence of the Appellant's responses, the information available for the Board's consideration was limited to the appeal application and the Registrar's report.

6.0 Board's consideration

6.1 The Board noted that the Registrar was satisfied that the Appellant met the following competency for the carpentry licence:

Carpentry Licence Competencies:

Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry.

6.2 The Board then considered Competencies 2, 3 and 4 for a Carpentry Licence. These competencies can be demonstrated by meeting some or all of the performance indicators as listed in Schedule 1 of the Rules.

6.3 The LBP scheme is competency based, and it is up to the practitioner to demonstrate their competency.

6.4 The Board, having considered the circumstances of this appeal, proceeded with the hearing in the absence of the Appellant.

6.5 The Board considered the information available against each of the relevant performance indicators. Because the Appellant did not attend the hearing, the Board did not have the opportunity to question him on his knowledge and experience, nor to verify the information provided.

Board's findings

6.6 The Board concluded that the Appellant failed to provide evidence to demonstrate that he met sufficient performance indicators to satisfy the requirements of Competencies 2, 3 and 4 for a Carpentry Licence.

7.0 Board's Decision

7.1 **Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision not to license [the Appellant] with a Carpentry Licence.**

8.0 Publication of Name

- 8.1 Pursuant to s339 of the Act, the Board may prohibit the publication of [the Appellant's] name and/or particulars.
- 8.2 The Board, having considered the circumstances of this appeal, directs that the name and the particulars of [the Appellant] are not to be made public.

Signed and dated this day of

Brian Nightingale
(Presiding Member)

Advice Note (not part of Board's Decision)

Extracts from the Act:

"330 Right of Appeal

- (1) *A person may appeal to the Board against any decision of the Registrar to—*
 (a) *decline to licence the person as a building practitioner;*
 ...
- (2) *A person may appeal to a District Court against any decision of the Board—*
 (a) *made by it on an appeal brought under subsection (1);*
 ...

331 Time in which appeal must be brought

An appeal must be lodged—

- (a) *within 20 working days after notice of the decision or action is communicated to the appellant; or*
- (b) *within any further time that the appeal authority allows on application made before or after the period expires."*